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SUPREME COURT, U. S.

No. 71-463

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

JOSEPH M. KADANS,

Appellant

VS.

JON R. COLLINS, CAMERON BATJER, GORDON THOMPSON, DAVID ZENOFF, JOHN MOWBRAY, as members of the NEVADA SUPREME COURT,

Appellees

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS (9th CIRCUIT)

Joseph M. Kadans, Esq., Attorney at Law
Attorney for Appellant
In Proper Person
3519 Thom Blvd.
Las Vegas, Nevada 89106

JURISDICTIONAL STATEMENT

No. _____

IN THE SUPREME COURT OF THE
UNITED STATES

_____,

Petitioner,

vs.

_____,

Respondent.

PETITION FOR WRIT OF CERTIORARI

_____

Petitioner prays that a writ of certiorari issue to review the judgment of the _____ Court of _____ entered on the _____ day of _____, 19__.

_____

Petitioner

_____

Attorney for Petitioner

_____

Address

_____

Telephone

IN THE UNITED STATES SUPREME COURT

JOSEPH M. KADANS)

Appellant)

vs.)

JON R. COLLINS, CAMERON)

BATJER, GORDON THOMPSON,)

DAVID ZENOFF, JOHN MOWBRAY,)

as members of the NEVADA)

SUPREME COURT,)

Appellees)

JURISDICTIONAL STATEMENT

1. NOW comes JOSEPH M. KADANS, Attorney at Law and member of the bars of the States of Maryland and Michigan and of the United States Supreme Court as well as various U.S. Courts of Appeals and U.S. District Courts and files this Jurisdictional Statement on behalf of Appellant in the above entitled cause, in compliance with Rule 15 of the Rules of the Supreme Court of the United States.

2. Report of opinions. The only opinion necessary to understand the grounds of the appeal is the opinion of United States District Court Judge Roger D. Foley on August 5, 1970, a copy of the Opinion being appended hereto. The U.S. Court of Appeals, in Case No. 26,522, on May 12, 1971 affirmed the lower court opinion in a per curiam decision: "The case is affirmed on the authority of our Hackin v. Lockwood, 9 Cir., 361 F2d 499."

3. Nature of proceeding and applicable statutes: A Complaint was filed in the United States District Court for the District of Nevada on December 31, 1969 asking for a declaration of rights under the U.S. Code, Title 28, Sec. 2201, the plaintiff, a lawyer of many years of good standing in the Bars of Maryland, Michigan and the U.S. Supreme Court, the author of PRINCIPLES OF MARITIME LAW and other text-books of law, on the recommended list of the Association of American Law Schools and formerly on the faculty of the Law School of Loyola University of Los Angeles, a fully approved law school, having been denied the right to take the Nevada State Bar Examination.

By this suit, appellant sought to test the validity of a Nevada Supreme Court Rule, 51(6), which bars the plaintiff from the examination. In addition to asking for a declaration of rights, the plaintiff sought an injunction to restrain the defendants (appellees) herein from barring the plaintiff from taking the annual Nevada State Bar examination, now scheduled for 1971 for the three day period starting Monday, Sept. 20, 1971.

Prior to taking this legal action to compel the State of Nevada to admit him to the Nevada Bar examination, plaintiff had practiced law continually since 1943, when he was first admitted to the Bar (of Maryland).

The case, therefore, falls within the nature of a case seeking declaratory and injunctive relief and thus the case falls within the statute requiring the calling of a three-judge court, the appellant having alleged and now alleging violation of the Fourteenth Amendment by the defendants (appellees) herein.

Without requiring an answer to be filed, and without requiring the convening of a three-judge court, the

3. Nature of proceeding and applicable statutes: A Complaint was filed in the United States District Court for the District of Nevada on December 31, 1969 asking for a declaration of rights under the U.S. Code, Title 28, Section 2201, the plaintiff, a lawyer of many years of good standing in the Bars of Maryland, Michigan and the U.S. Supreme Court, the author of PRINCIPLES OF MARITIME LAW and other text-books of law, on the recommended list of the Association of American Law Schools and formerly on the faculty of the Law School of Loyola University of Los Angeles, a fully approved law school, having been denied the right to take the Nevada State Bar Examination.

By this suit, appellant sought to test the validity of a Nevada Supreme Court Rule, 51(3), which bars the plaintiff from the examination. In addition to asking for a declaration of rights, the plaintiff sought an injunction to restrain the defendants (appellees) herein from barring the plaintiff from taking the annual Nevada State Bar examination, now scheduled for 1971 for the three-day period starting Monday, Sept. 27, 1971.

Prior to taking this legal action to compel the State of Nevada to admit him to the Nevada Bar examination, plaintiff had practiced law continually since 1953, when he was first admitted to the Bar (of Maryland).

The case, therefore, falls within the nature of a case seeking declaratory and injunctive relief and thus the case falls within the statute requiring the calling of a three-judge court, the appellant having alleged and now alleging violation of the Fourteenth Amendment by the defendants (appellees) herein.

Without requiring an answer to be filed, and without requiring the convening of a three-judge court, the

District Judge, sitting as a single judge, decided the merits of the case and denied any relief. His action was affirmed by the U.S. Court of Appeals.

The nature of the case is such that many thousands of lawyers who may wish to move from one state to another are affected by this case. In addition, many citizens may be deprived of qualified attorneys of their own choosing if the decision of the lower court is allowed to stand, barring a highly qualified attorney from taking the State bar examination so he may demonstrate his qualifications to practice law in Nevada.

All of the necessary prerequisites for a three-judge court are present in this case.

Dates of judgment, petition for rehearing and notice of appeal. The judgment of the U.S. Court of Appeals sought to be reviewed is dated May 12, 1971 with a provision that "the mandate will issue 21 days from today" if no petition for rehearing is filed. A petition for rehearing was mailed to the Clerk of that Court on May 24, 1971. The rehearing petition was denied on June 23, 1971. The Notice of Appeal to the U. S. Supreme Court was mailed to the Clerk of the U. S. Court of Appeals for the Ninth Circuit on August 22, 1971.

5. Statute allowing jurisdiction of appeal. Inasmuch as under Title 28, sec. 1253 "any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by an Act of Congress to be heard and determined by a district court of three judges," and inasmuch as the case at bar is a case that is required to be heard and determined by a district court of three judges, the Supreme Court has jurisdiction to hear this appeal. Appellant had applied for an injunction in a case requiring three

judges. The district court judge failed to call for three judges, denied injunctive relief and decided the case on the merits, all without requiring an answer to be filed. On appeal to the U.S. Court of Appeals (9th) the action of the district court was affirmed.

The clear statutory right to an appeal to the Supreme Court is not abrogated merely by a district court judge failing to convene three judges nor is this statutory right lost by first taking an appeal to the U. S. Court of Appeals.

6. Cases believing to sustain the jurisdiction. Loeb v. Trustees, 17 U.S. 472, 45 L ed 280; Fidelity v. Mettler, 185 U.S. 308, 46 L ed 922. Palmetto Fire Ins. Co. v. Conn. 272 U.S. 295; 71 L ed 243; Van Dyke v. Geary, 244 U.S. 39, 69 61 L ed 973

7. Invalid statute or order of Agency of State:

Nevada Revised Statutes, Supreme Court Rules:

Rule 51(6):
" * * * an applicant for examination for a license to practice as an attorney and counselor at law in this state shall:
* * * * * *
"Present sufficient evidence to establish to the satisfaction of the court that he has * * * Received a degree of bachelor of laws, or its equivalent, from a law school approved by the committee on legal education and admissions to the bar of the American Bar Association."

8. Questions presented by the appeal.

A. May a U.S. District Court Judge re-write an Act of Congress requiring a three-judge court so that instead of

judges. The district court judge failed to call for three judges, denied injunctive relief and decided the case on the merits, all without requiring an answer to be filed. On appeal to the U.S. Court of Appeals (5th) the action of the district court was affirmed.

The Supreme Court is not absolutely bound by stare decisis but is not always willing to overrule its precedents. Cases deciding to sustain the jurisdiction: Idaho v. Texas, 11 U.S. 412, 45 L ed 258; Pulmeter v. Nebraska, 166 U.S. 303, 41 L ed 1132. Cases declining to sustain the jurisdiction: Van Dyke v. Geary, 244 U.S. 39, 61 L ed 973

If Howard Stern, or other of Ayers, Clinton's

a * * an applicant for examination for a

* * * *

calling for a three-judge court as required by law decide the case on the merits himself?

Appellant believes this question should be answered in the negative; appellees believe it should be answered affirmatively.

B. May a U.S. District Court judge ignore decisions of the United States Supreme Court that control a case and instead select a lower court case as his guide that has no relevancy to his decision?

Appellant believes this question should be answered in the negative; appellees believe it should be answered affirmatively.

9. Statement of the case. Briefly, the facts are that a lawyer of unquestioned high character and of undoubted high learning in the law with many years (19) of actual practice of law in such cities as Baltimore, Maryland and Detroit, Michigan, handling several hundred cases in the state and federal courts of those jurisdictions, and who has written several law books (Elements of Insurance; Principles of Maritime Law; The Law of International Trade; Federal Administrative and Court Procedure), and who has taught in two law schools (one accredited by the State of Maryland as an accredited law school and another accredited by the American Bar Association as a fully accredited law school) and who has addressed lawyer groups throughout the United States as an authority on admiralty law and federal procedure, has been denied admission to the Nevada Bar Examination because the lawyer's law school (University of Baltimore, Baltimore, Maryland) although fully accredited by the State of Maryland is not on the approved list of law schools of the American Bar Association.

calling for a three-judge court as required by law decide the case on the merits himself?

Appellant believes this question should be answered in the negative, appellee believes it should be answered affirmatively.

5. May a U.S. District Court judge ignore decisions of the United States Supreme Court and control a case and thereby defeat a lower court case as he finds that his relevancy to its decision?

Appellant believes this question should be answered in the negative, appellee believes it should be answered affirmatively.

6. Disbarment of the case. Briefly, the facts are that a lawyer of good character and reputation in the community in which he resides, after practicing law in the state and federal courts of those jurisdictions, and who has written several law books (Elements of Insurance, Principles of Maritime Law; The Law of International Trade, Federal Administrative and Court Procedure), and who has taught in two law schools (one accredited by the state of Maryland as an accredited law school and another accredited by the American Bar Association as a fully accredited law school) and who has successfully argued cases throughout the United States as an authority on admiralty law and federal procedure, has been denied admission to the Nevada Bar Examination because the lawyer's law school (University of Baltimore, Baltimore, Maryland) although fully accredited by the State of Maryland is not on the approved list of law schools of the American Bar Association.

is
The case/of transcending public importance, many lawyers throughout the United States and a number of eminent jurists having learned law other than by attending law schools approved by the American Bar Association. For many years, many lawyers have studied law in law offices, have been admitted to the practice of law prior to adoption of state laws requiring attendance at ABA-approved law schools (as in the case at bar) and a number of lawyers have studied law through home-study of law books and thereby obtaining sufficient learning in the law to pass state bar examinations.

This type of overbroad rule (as exists in the State of Nevada) tends to restrict free movement of lawyers wishing to change residence from one state to another and are thus prevented from pursuing their occupations when they move from one part of a country to another.

The rule has no demonstrable relationship as a reasonable measure of job performance. The Supreme Court has ruled in Schware v. Board of Bar Examiners, 353 U.S. 232, 1 Led 2 796 that "any qualification must have a rational connection with the applicant's fitness or capacity to practice law."

In the recent case of Griggs v. Duke Power Co., 28 L ed 2d ____, it was held by the Supreme Court that the requirement of high school graduation was an improper job requirement and the 4th Circuit was reversed. Likewise, graduation from an ABA approved law school is an improper requirement, especially when the rule bars from the state bar examination an eminent lawyer of great skill in the law. Such a rule not only constitutes an onerous restriction of an impermissible character but, in addition, not only fails to serve the public interest but actually deprives citizens of the right to

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select eminent and highly qualified attorneys residing in their areas but prevented from practicing law not by a board of laymen or even the state legislature but by members of their own profession already established in the profession either as lawyers or judges.

" *** no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws." This quotation from Ex parte Virginia, 100 US 339, 25 L ed 676 was cited in Cooper v. Aaron, 358 U.S. 1, 3 L ed 2d 5, 16 the Supreme Court holding:

> "Thus the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action."

Thus, a State may not avoid the consequences of adoption of an onerous requirement in connection with carrying on one's vocation in that state by arranging for a professional group to set forth the onerous requirement rather than setting forth the requirement as part of a state statute. The Congress has wisely provided that overbroad requirements as to job qualifications are State requirements whether imposed by state statute or by a State agency. The judicial branch of state government is part of the state agency structure.

While the law school requirement in Nevada, applied equally to fresh law school graduates as well as to seasoned lawyers and jurists of many years of high standing at the bar in other states may deny bar admission to some applicants who lack competence, it also bars, arbitrarily and capriciously, applicants who are eminently qualified for admission.

eminently qualified for admission.

In the carefully reasoned opinion of Circuit Judge Craven in Keenan v. Board of Law Examiners, 317 F. Supp. 1350 (1970), a three-judge district court held that a bar admission rule was unconstitutional "because it creates an unreasonable, arbitrary classification, unnecessarily burdens the plaintiffs' right to travel, and arbitrarily denies the plaintiffs an opportunity to practice their profession."

The decision found the Board of Law Examiners to be an administrative agency with both judicial and delegated legislative powers, as it is the rule-making body in North Carolina. In Nevada, the rule-making is exclusively within the province of the Nevada Supreme Court and therefore it is reasonable to assume that in Nevada, the Supreme Court in making rules for admission to the Bar, acts as an administrative agency with both judicial and delegated legislative powers.

Statutory jurisdiction is also claimed in the case at bar, as in the Keenan Case, supra, by virtue of 28 USC 1343(3) and it is believed that in the case at bar, as in the Keenan Case "federal district courts have jurisdiction under 28 USC 1343 to consider claims arising out of the application by state officials of a general bar admission requirement that is alleged to be unconstitutional on its face."

It is carefully pointed out in the Keenan Case, supra, that although federal courts may decline jurisdiction in disciplinary cases, the "hands off" doctrine "is inapplicable to Fourteenth Amendment claims with respect to admission to practice, and that state court preemption is probably limited to disciplinary proceedings not involving constitutional questions."

The district court has clearly abused its

discretion by arbitrarily and capriciously denying to appellant his clear right to a three-judge court.

A state law or regulation applicable to the right to carry on in one's profession that has "no rational connection between premise and conclusion" (Wheeler v. Goodman, 306 F. Supp. 58, W. D. N. C. 1969) has a constitutional infirmity known as over-inclusion. (Rinaldi v. Yeager, 384 U.S. 305, 86 S. Ct. 1497, 1966 and Carrington v. Rash, 380 U.S. 89, 85 S. Ct. 775, 1915)

The rule or standard adopted by the State of Nevada preventing lawyers from moving to Nevada to practice their profession unless graduates of ABA-approved law schools, regardless of the length of years of practice or recognized and established proficiency in the law is an impermissible onerous restriction, a term borrowed from the case of Webster v. Wofford, 321 F. Supp. 1259, 1970 wherein a three-judge federal district court struck down an onerous bar admission rule.

Just as in the Webster Case, supra, the Court declared that the state rule discriminated against a class of bar applicants, so in the case at bar does the state rule in Nevada discriminate against bar applicants of long standing at the bars of sister states who met all requirements of the sister states but are unable to meet the overly-strict Nevada requirements, thus being deprived of the right to practice their profession and, in fact, the right to travel and reside in Nevada. (So held in the Keenan Case, supra)

Respectfully submitted,

Joseph M. Kadans
Attorney At Law - In pro per
3519 Thom Blvd.
Las Vegas, Nev. 89106

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

JOSEPH M. KADANS
Plaintiff
vs.

JON R. COLLINS, CAMERON BATJER, GORDON THOMPSON, DAVID ZENOFF, JOHN MOWBRAY, as members of the NEVADA SUPREME COURT
Defendants

CIVIL NO. LV-1374

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

Plaintiff brings this action against the individual Justices of the Nevada Supreme Court. He contends that Rule 51(6) of the Nevada Supreme Court Rules, which provides: "An applicant for examination for a license to practice as an attorney and counselor at law in this state shall:
" * * * 6. Have received a degree of bachelor of laws, or an equivalent law degree, from a law school approved by the committee on legal education and admissions to the bar of the American Bar Association, and shall present evidence of the same."

is unconstitutional under the Fourteenth Amendment to the Constitution of the United States in that as applied to his case, the rule deprives him of his property right to practice law without due process of law and denies him equal protection of the law.

This is the second action that the plaintiff has commenced in this court arising out of his

APPENDIX A

being precluded from taking the Nevada bar examination. In the former case, Kadans v. Dickerson, et al., Civil No. 665, this Court found that plaintiff was first licensed to practice law in the State of Maryland in 1943 following his graduation from the University of Baltimore School of Law, a law school not accredited at the time of his graduation as required by Nevada Supreme Court Rule 51(6).

This Court's jurisdiction is not specifically alleged as it should have been. However, when viewed in its entirety it may be said that the complaint does allege that plaintiff is being deprived under color of state law of privileges and immunities secured by the Constitution of the United States under 28 U.S.C. sec. 1343(3).

A three-judge court is not required. Plaintiff does not contend that any state statute is unconstitutional. He does not attack NRS 2.120 authorizing the Supreme Court to make its own rules governing the state bar, but attacks only the rule itself.

The complaint must be dismissed; it does not state facts upon which relief can be granted in the federal court. See Hacklin v. Lockwood (9th Cir. 1966), 361 Fed. 2d 499; Henington v. State Board of Bar Examiners (New Mex. 1956), 291 Pac. 2d 1108; In re Lorring (Nev. 1959), 340 Pac. 2d 589; Petition of Batten (Nev. 1967), 428 Pac. 2d 195.

Rule 51(6), as applied to plaintiff and to others older attorneys admitted elsewhere who completed their legal education in unaccredited law schools years before Rule 51(6) was adopted in Nevada in 1951, is not arbitrary, capricious or unreasonable and the rule does not deprive plaintiff of property right without due process of law.

The Nelson case, discussed in the brief and oral argument, does not make out a case of denial of equal protection of the law. Both Lorring, before Nelson, and Batten, after Nelson, were treated in the same manner as plaintiff.

The motion to dismiss is granted.

DATED: August 5, 1970. ROGER D. FOLEY
District Judge.

CERTIFICATE OF SERVICE

The undersigned, JOSEPH M. KADANS, a member of the bar of the United States Supreme Court and of the States of Maryland and Michigan, does hereby certify 3 copies of the foregoing Jurisdictional Statement were mailed on Sept. 10th 1971 to the following:

Jon R. Collins, Esq., 302 E. Carson, Las Vegas, Nev.
Hon. David Zenoff, Supreme Court, Carson City, Nev.
Hon. John Mowbray, Supreme Court, Carson City, Nev.
Hon. Cameron Batjer, Supreme Court, Carson City, Nev.
Hon. Gordon Thompson, Supreme Court, Carson City, Nev.
Hon. E. M. Gunderson, Supreme Court, Carson City, Nev.
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